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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARLON CRANDEL SMILEY,

Defendant and Appellant.

B173150

(Los Angeles County
Super. Ct. No. PA041350)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Ronald S. Coen, Judge. Affirmed.

Landra E. Rosenthal, under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Jaime L.
Fuster, Supervising Deputy Attorney General, and Tita Nguyen, Deputy Attorney
General, for Plaintiff and Respondent.

Marlon Crandel Smiley was convicted of one count of murder and one count of residential burglary, with true findings on two special circumstance allegations (lying in wait and torture) and on allegations that the murder was committed with a knife and hammer. (Pen. Code, §§ 187, subd. (a), 459, 190.2, subds. (a)(15), (a)(18), 12022, subd. (b)(1).) He was sentenced to state prison for life without the possibility of parole plus two years for the deadly weapon findings. Smiley appeals, contending a statement he gave the police while hospitalized should have been suppressed. (*Miranda v. Arizona* (1966) 384 U.S. 436, 475.) We disagree and affirm the judgment.

DISCUSSION

A.

After a failed attempt at reconciliation with his former girlfriend (Stacy Baker), Smiley bought a knife, went to her apartment at a time he knew she was not there, broke in, took a hammer from her kitchen, and waited for Baker to return -- at which time he repeatedly hit her with the hammer and stabbed her until she died. Smiley then went home. Baker's body was found later the same day.

When the police arrived at Smiley's apartment in the early morning hours of the following day, Smiley tried to kill himself by jumping from the balcony to the ground. He survived and was taken to the hospital, where he was interviewed by Detective Orlando Martinez. Detective Martinez spoke to the physician who had treated Smiley, determined that Smiley was not under the influence of drugs or alcohol, then advised Smiley of his rights, which Smiley impliedly waived. Smiley then told the detective how he had killed Baker, and a

subsequent search of Smiley's apartment yielded a receipt for the knife and his bloody clothing.

B.

At his preliminary hearing and again just before trial, Smiley moved to exclude his statements to Detective Martinez, claiming his mental state was "impaired" when he talked to the detective at the hospital and he was not able to fully understand his rights.

At the second hearing, Detective Martinez testified that Smiley, although immobilized so that he could only look straight up, was awake and aware of his surroundings; when asked whether he knew why there were several police officers present, Smiley answered affirmatively, and his answers to other preliminary questions satisfied Detective Martinez that Smiley understood what was going on. Detective Martinez advised Smiley of each of his rights, and Smiley said he understood them and waived them. When the detective then asked if Smiley wanted "to talk about what happened," Smiley said he did and then gave his statement to Detective Martinez. Another detective was present and heard the waivers and the confession that followed.

For his part, Smiley testified that before the police had arrived at his apartment, he had used marijuana (three or four pipes), consumed alcohol (a bottle of tequila), and tried to drown himself in his bathtub, then tried to slit his wrists. When he heard the police at his door, he jumped off the balcony. He did not remember when it was that he used the drugs or drank the tequila, and it could have been anytime from the day before the murder to the day after.

The trial court expressly found that Detective Martinez was credible, rejected Smiley's testimony, and found that Smiley was not under the influence of an intoxicant or any drugs at the time he knowingly waived his rights and confessed to the police.

C.

Given the testimony summarized above and the trial court's express credibility calls, we reject Smiley's contention that there is insufficient evidence to support the trial court's finding that Smiley knowingly waived his rights and voluntarily confessed to the police. The ruling, which is supported by substantial evidence, was not erroneous (and it makes no difference whether Smiley was or wasn't in custody at the time he waived his rights). (*People v. Jackson* (1989) 49 Cal.3d 1170, 1189 [the mere fact of voluntary consumption of alcohol does not establish impaired capacity]; *People v. Nitschmann* (1995) 35 Cal.App.4th 677, 683; *People v. Whitson* (1998) 17 Cal.4th 229, 248; *People v. Wash* (1993) 6 Cal.4th 215, 235-236; *Duckworth v. Eagan* (1989) 492 U.S. 195, 202-203; and see *United States v. Velasquez* (3d Cir. 1980) 626 F.2d 314, 320 [a defendant's subsequent willingness to answer questions after acknowledging that he understood his *Miranda* rights is sufficient to constitute an implied waiver].)

DISPOSTION

The judgment is affirmed.

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VOGEL, J.

We concur:

MALLANO, Acting P.J.

SUZUKAWA, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.